REORGANIZING THE FINANCIAL SERVICES REGULATORS IN SASKATCHEWAN:

THE SASKATCHEWAN FINANCIAL SERVICES COMMISSION

November 2001

INTRODUCTION

The Government of Saskatchewan is considering a proposal to establish a single regulatory body with broad responsibilities respecting the regulation of the financial services including lending, securities, pensions, insurance, deposit taking, trust services and other financial products and services.

The objective of this paper is to present an organizational model and legislative approach for your review and comment.

We wish to acknowledge the work of D. Rosten and Associates. The Saskatoon-based consulting firm was engaged last year to examine the financial services industry and the way it is regulated across Canada and to look at options for the organization of the financial market regulators. In conducting the assignment, D. Rosten and Associates consulted with government officials and senior personnel in regulatory organizations, as well as, various industry stakeholders. D. Rosten and Associates' recommendations formed the basis of much of the proposal.

CURRENT ORGANIZATIONS

In Saskatchewan, three regulators protect the interests of consumers in the areas of financial services, securities, insurance, trust and loans, credit unions and pension benefits:

- the Saskatchewan Securities Commission
- the Financial Institutions Section of the Consumer Protection Branch
- The Pension Benefits Branch

These entities enhance consumer protection through licensing, registration, audit, complaint handling and enforcement activities pursuant to various acts including:

- *The Securities Act, 1988*
- *The Credit Union Act, 1998*
- *The Saskatchewan Insurance Act*
- *The Trust and Loan Corporations Act,1997*
- *The Pension Benefits Act, 1992*
- *The Mortgage Brokers Act*

The regulators also have responsibilities under:

- *The Municipal Hail Insurance Act*
- *The Real Estate Act*
- *The Guarantee Companies Securities Act*

The mission of the **Saskatchewan Securities Commission** (SSC) is to protect investors by regulating the sale of securities to ensure that:

- those who sell securities to investors are honest and competent,

- investors are provided with selling documents which contain truthful, complete and understandable information on which to base their investment decisions,
- buyers and sellers have equal access to information about companies whose shares trade in the secondary market, and
- those who take undue advantage of purchasers are held to account.

The SSC operates under a two-tiered structure. A Commission, appointed by Order-in-council, makes regulations governing certain matters, establishes policy, grants exemption orders, functions as a quasi-judicial tribunal in conducting hearings and acts as an appeal body from decisions of staff. The 17 member staff of the SSC carries out the day-to-day functions and implements the regulations and policies established by the Commission.

The **Financial Institutions Section** (FIS) of the Consumer Protection Branch is responsible for the regulation of Saskatchewan credit unions, trust and loan companies, insurance companies and mortgage brokers. The policy objectives of FIS are to effectively regulate the financial services marketplace so that consumers' interests are protected and financial services providers are not unduly restricted in carrying out their activities.

The FIS has a staff of eleven under the direction of the Superintendent of Financial Institutions and Insurance and Registrar of Credit Unions.

The **Pension Benefits Branch** (PBB) has a staff of three. The Superintendent of Pensions is the head of the branch.

Pension legislation is intended to protect and preserve employees' pensions derived through employment. For each registered pension plan:

- the plan administrator has an overriding fiduciary duty to the plan members with respect to the administration of the plan and investment of the pension fund,
- the plan must satisfy prescribed minimum standards relating to structure and administration,
- the plan must satisfy prescribed minimum standards with respect to the investment of the plan's fund and the ongoing funding of the plan, and
- initial and ongoing disclosure about the plan must be provided to or made accessible to members and other plan beneficiaries, and certain disclosure must also be provided to the regulator to ensure compliance with pension legislation.

CURRENT ENVIRONMENT

The financial marketplace is under transformation.

In order to enhance the coordination and cooperation among regulators in all three sectors on a national basis, the Canadian Association of Pension Supervisory Authorities (CAPSA), the Canadian Council of Insurance Regulators (CCIR) and the Canadian Securities Administrators (CSA) have come together under the banner of the Joint Forum of Financial Market Regulators to meet the regulatory challenges that the evolving marketplace presents.

The current strategic plan of the Joint Forum of Financial Market Regulators describes the environment as follows:

> "The four pillars that dominated the (financial services) industry; banking, trusts, insurance, and securities, are rapidly being integrated as industry convergence and blurring business lines make the traditional silo approach to financial services delivery an anachronism.
>
> Change is also being driven by a new generation of consumers, demanding access to integrated financial services planning in a highly competitive marketplace. In response, salespeople are holding several licences required to sell a variety of products across a number of sectors.
>
> As a result of the speed of these changes in the marketplace, the regulatory structures that have served consumers for decades are falling behind. Similar products with similar features are being regulated under different regimes, raising the spectre of regulatory arbitrage – shopping for the most friendly and economical regulatory standards across sectors.
>
> Moreover, while Canada is considered by organizations such as the International Monetary Fund to have one of the soundest financial systems in the world, concerns have been raised that future developments will test the resilience of the Canadian regulatory and supervisory framework principally in the areas of harmonization and coordination."

RATIONALE FOR INTEGRATING SASKATCHEWAN'S FINANCIAL SERVICES REGULATORS

The national policy work conducted by CAPSA, CCIR, CSA and the Joint Forum will lead to more harmonious and effective regulation within and across financial sectors and jurisdictions.

The advantages of taking a further step within Saskatchewan by integrating the financial services regulators are clear and persuasive. Integration will:

- give consumers and the financial services industry a single point of access to the financial market regulator;
- provide a stronger voice for Saskatchewan in discussions of national financial market policies;
- allow better decision making and responsiveness with respect to regulatory initiatives in new areas of regulation or that cross sectors;
- provide the financial market regulator with a pool of resources that has a variety of knowledge, experience and expertise;
- raise the public profile of the FIS and the PBB;
- improve recruitment, employee development and retention.

PROPOSED ORGANIZATION

The proposed organization and its underlying legislation are based on the following guiding principles:

- **Independent.** The new organization will have significant powers, including the power to make certain regulations under *The Securities Act*. To maintain the confidence of consumers and the financial services industry, the new organization must demonstrate its independence from government in both real and perceived terms.

- **Connected to the financial marketplace.** The financial market regulator must be open and responsive to the public interest. The purpose of regulation is to protect consumers by addressing a perceived imbalance in power or information in the marketplace. However, the interests of business also must be heard. The consultations conducted by Don Rosten reinforced the desire of agents, brokers, salespersons and dealers ("intermediaries") to move towards more self-regulation. The financial services industry, in general, wants to have input into how the industry is regulated.

- **Adaptable and flexible.** The financial market regulator must be able to adapt to the changing marketplace and be flexible enough to apply regulatory oversight appropriate to the sector under regulation.

- **Retain sector-specific expertise.** While convergence is occurring in the marketplace, significant differences remain in terms of products and services, institutions, and legislation. Ongoing sector-specific expertise within the new organization will be required.

- **Balanced.** A single sector or regulatory approach will not dominate the organization.

- **Focus on organization.** The proposal is focussed on the administration of financial services legislation, not the substance of the legislation or current policy directions.

The Commission

The new organization will have a broad mandate with respect to financial services and financial service regulation. This suggests a governing body that encompasses a wide range of skills and experience. Therefore it is proposed that a commission be established called the Saskatchewan Financial Services Commission (SFSC).

The SFSC would consist of no more than seven members, including a chair, appointed by the Lieutenant Governor in Council following Cabinet's recommendation.

Initially, the responsibilities of the Commission would be in the nature of "oversight" with the capacity to undertake direct regulation if authorized by regulations. For example:

> **Responsibilities of commission**
> (1) The commission is responsible for the following:
>
> (a) co-ordinating financial services regulators;
>
> (b) providing for the development of policies to protect the interests of consumers of financial services;
>
> (c) providing for the development of policies to regulate financial services and any persons who, or associations or groups of persons that, provide financial services;
>
> (d) performing any responsibilities of a financial services regulator pursuant to any financial services legislation that are assigned to the commission by the regulations;
>
> (e) performing any other responsibilities that are assigned to the commission by the regulations.
>
> (2) Where the commission has been assigned any responsibilities of a financial services regulator, the financial services regulator ceases to be under a duty to perform that responsibility.
>
> (3) Where requested to do so, the commission shall report to the minister respecting any matter that the minister has inquired about within the time set by the minister.

For example, regulations could, in effect, mandate that the SFSC is assigned the responsibilities of the Saskatchewan Securities Commission. At that point the SFSC would assume all of the responsibilities and powers of the SSC under *The Securities Act, 1988*. The SFSC would then have the power to make regulations, establish policy, grant exemption orders for securities registration and function as a quasi-judicial tribunal in conducting hearings as set out by securities legislation.

The SFSC could also carry out regulatory functions with respect to other financial services if regulations are passed to extend the authority to the Commission beyond securities matters. In the absence of such regulations, the current regulators would retain their existing responsibilities and authority according to the existing legislation. The status quo will be maintained unless there are good business reasons for making changes and consultation with affected parties has occurred.

In addition, the Commission would be responsible for the general conduct of its hearings and other business. The chair of the Commission could establish hearing panels composed of commission members and other persons who possess specific knowledge or skills relevant to a particular matter.

Role of Current Regulators

The new organization will regulate marketplace conduct, but it must also understand prudential regulation. The new organization will be concerned with wealth management products and services, but it also must regulate risk management products and services like defined benefit pension plans and property and casualty insurance. To be effective, the new organization must respect the differences between the regulated sectors and must understand the uniqueness of the Saskatchewan financial marketplace.

The need for ongoing significant specialized expertise at a very high level within the organization is apparent. There is no reason to anticipate that the role of the Superintendent of Financial Institutions and Insurance and Registrar of Credit Unions, the Director of the Securities Commission and the Superintendent of Pensions will diminish in the new organization.

Role of Industry-Based Self-Regulatory Organizations

Self-regulation is an important part of the regulatory system in Saskatchewan. The agencies that presently perform self-regulation are:

- The General Insurance Council of Saskatchewan
- The Life Insurance Council of Saskatchewan
- The Hail Insurance Council of Saskatchewan
- The Investment Dealers Association of Canada
- The Mutual Fund Dealers Association of Canada
- The Credit Union Deposit Guarantee Corporation

Under the proposal, intermediary self-regulators will continue handling many "front-line" duties including registration, collecting fees, investigating consumer complaints and member discipline. Intermediaries have said that self-regulation provides better regulation, better consumer protection and tougher member discipline than government. Industry members are being regulated by people who know the specific problems of the industry and how they should be addressed. Industry members have a strong interest in ensuring that all members are following appropriate codes of conduct and are not acting in a manner that would jeopardize the integrity of their industry. The livelihood of all members of an industry relies on the confidence consumers have in that particular industry.

As well, the Credit Union Deposit Guarantee Corporation will continue its current role in regulating credit unions.

Oversight of these activities is the responsibility of government regulators and would fall under the umbrella of the Saskatchewan Financial Services Commission. The proposal allows industry input as to how it is regulated and provides government and the general public with effective regulation.

Ministerial Advisory Committee

A ministerial advisory committee is also under consideration to provide a forum for the consideration of financial services issues. The Minister's Advisory Committee would include representation from industry, self-regulatory organizations and consumers. This committee would be established through legislation. It would advise not only the Minister but would also provide important feedback and commentary on future developments and regulatory issues to the Commission.

Draft provisions could look something like the following:

> **Advisory committee**
> (1) The minister may appoint an advisory committee for any or all of the following purposes:
>
> > (a) advising the minister with respect to the performance of any of the responsibilities imposed on, or the exercise of any of the powers given to, the minister by this Act, the regulations or any financial services legislation;
> >
> > (b) advising the minister with respect to the operation and application of this Act, the regulations or any financial services legislation.
>
> (2) In an order appointing an advisory committee, the minister shall specify the purpose of the advisory committee and the period for which it is appointed.
>
> (3) The minister shall obtain the approval of the Lieutenant Governor in Council before appointing an advisory committee for longer than one year.

Regulation making authority

The Saskatchewan Financial Services Commission could be given the power to make regulations under legislation.

Currently, the Saskatchewan Securities Commission has the power to make regulations to supplement the provisions of *The Securities Act*. Regulation making was introduced in 1997 to support national initiatives to harmonize securities regulations among the provinces, thereby providing a national framework for securities regulation in Canada. This authority allows Saskatchewan securities legislation to remain relevant in today's constantly evolving capital markets.

Most of the regulation making activity relates to national instruments that are developed through committees from the national organization called the Canadian Securities Administrators (CSA). These national instruments set out standards intended to apply across the country. Each provincial securities commission adopts a national instrument as a local rule or, in Saskatchewan's case, as a Commission regulation. Staff of the SSC participates on CSA committees that develop these national instruments.

It is expected that the proposed regulation making process would be similar to what is done by the SSC today. A draft regulation prepared by the staff of the SFSC would be required to be published. Stakeholders would have a time period to study and comment on the draft. The Commission would consider the written comments and if the proposed regulation was changed materially as a result of the comments, the Commission would subject the re-drafted regulation to another notice and comment process.

After adoption by the Commission, the proposed regulation would be sent to the Minister of Justice, together with a summary of the comments received and the Commission's response to those comments. The Minister would have an appropriate time period to approve, reject or return the regulation to the Commission for further consideration. If the regulation was not approved, rejected or returned to the Commission, the regulation would be considered approved and would take effect immediately on the date of filing.

In many areas it will be appropriate for the government to retain sole responsibility for making regulations. The pension industry, for instance, has been persuasive in arguing for limiting regulation making to matters of a technical or administrative nature.

An appropriate regulation making process is responsive to today's rapidly changing markets, yet, at the same time, is flexible. It ensures accountability to government, the public and industry, and all stakeholders are allowed participation in the process.

Regulators and the financial services industry emphasize the importance of the harmonization of rules and regulations among the provinces. Harmonization can facilitate fairness and consistency for all financial services sectors regulated under the different jurisdictions. Regulation making powers support this goal.

Role of the Department of Justice

The Department of Justice will continue to serve as an important check and balance on the power of the Commission. Nowhere is this more critical than in the consideration of policy and the preparation of legislation. The Department also will play an important role in the appointment of the Commission and Advisory Council.

Service Standards

Financial sector regulators in Saskatchewan are striving to provide timely, efficient service to industry and consumers. This challenge is becoming increasingly difficult due to the competing demands of maintaining existing service levels and maintaining current knowledge about an exceedingly dynamic and complex marketplace.

A number of provinces have addressed these challenges by ensuring that regulators have appropriate resources utilizing alternative funding mechanisms. Ontario, for example, has self-funding for the Ontario Securities Commission.

Longer-term the integration proposal would present opportunities to examine the merger of common functions like licensing and enforcement. However, capturing administrative efficiencies is not the point of the exercise.

In addition, nothing should be construed from the proposal regarding the future of the fees charged by the government to the financial services marketplace or the level of expenditures made by the regulators. The government remains committed to ensuring that the financial services regulators have appropriate resources.

NEXT STEPS

We wish to receive reactions to this proposal from groups or individuals. We ask that any comments you may have be directed to Keith Laxdal, Associate Deputy Minister, by December 21, 2001.

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With the benefit of your views we hope to present the initiative to the Legislative Assembly, possibly during the 2002 session.